

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

JAMIE SPENCER,

Plaintiff

v

CITY OF BAY CITY,

Case No. 02-10280
HON. DAVID M. LAWSON

Defendant

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DEFENDANTS' ANSWER TO PLAINTIFF'S COMPLAINT

NOW COMES the Defendant, the CITY OF BAY CITY, by and through its attorneys, CUMMINGS, MCCLOREY, DAVIS & ACHO, P.L.C., by ETHAN VINSON, and answers Plaintiff's Complaint as follows:

1. Answering paragraph 1, Defendant denies the allegations contained therein for the reason that they are not true. Answering further, Defendant states that it does not have a policy of requiring individuals who are 20 years or younger to randomly take breathalyzer tests.

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2. Answering paragraph 2, Defendant admits that Plaintiff's lawsuit purports to challenge the constitutionality of Bay City Ordinance §10-57. Answering further, Defendant denies that the Bay City Ordinance unconstitutionally penalizes non-drivers for exercising their constitutional rights.

3. Answering paragraph 3, Defendant admits that this lawsuit purports to seek the relief as stated, but denies that any of Plaintiff's constitutional rights were violated.

JURISDICTION AND VENUE

4. Answering paragraph 4, Defendant admits that this Court has jurisdiction over the claims that Plaintiff has pled. Answering further, Defendant denies that Plaintiff has been deprived of any constitutional rights.

5. Answering paragraph 5, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation contained therin.

6. Answering paragraph 6, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation contained therein.

7. Answering paragraph 7, Defendant admits the allegation contained therein.

FACTS

8. Answering paragraph 8, Defendant is without knowledge or information sufficient to form a belief as to the truth of the

allegation contained therein.

9. Answering paragraph 9, Defendant admits that two Bay City police cars responded to a possible fight in the park call on or about August 20, 2001. Answering further, Defendant is without knowledge or information sufficient to form a belief as to the truth of the remainder of the allegation contained therein.

10. Answering paragraph 10, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation contained therein.

11. Answering paragraph 11, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation contained therein.

12. Answering paragraph 12, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation contained therein.

13. Answering paragraph 13, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation contained therein.

14. Answering paragraph 14, Defendant admits that if Ms. Spencer took a preliminary chemical breath test a search warrant was not obtained.

15. Answering paragraph 15, Defendant admits the allegation contained therein.

16. Answering paragraph 16, Defendant denies the allegation contained therein for the reason it is not true.

17. Answering paragraph 17, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation contained therein.

18. Answering paragraph 18, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation contained therein.

19. Answering paragraph 19, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation contained therein.

20. Answering paragraph 20, Defendant admits the allegation contained therein.

21. Answering paragraph 21, Defendant admits the allegation contained therein.

22. Answering paragraph 22, Defendant admits that Bay City Ordinance §10-57(e) reads as stated.

23. Answering paragraph 23, Defendant admits that the Bay City Ordinance does not require an officer to obtain a warrant to administer a preliminary chemical breath test to a person under 21 years of age if there is reasonable cause to believe that person has consumed alcoholic liquor.

CAUSE OF ACTION

VIOLATION OF FOURTH AMENDMENT AND 42 USC §1983

24. Answering paragraph 24, Defendant hereby re-avers and incorporates by this reference its answers to paragraphs 1 through 23 of Plaintiff's Complaint as if fully set forth herein, word for word and paragraph by paragraph.

25. Answering paragraph 25, Defendant denies the allegation contained therein for the reason that it is not true.

26. Answering paragraph 26, Defendant denies the allegation contained therein for the reason that it is not true.

27. Answering paragraph 27, Defendant denies the allegation contained therein for the reason that no search was conducted of Ms. Spencer's person.

28. Answering paragraph 28, Defendant denies the allegation contained therein as stated for the reason that it is not true.

29. Answering paragraph 29, Defendant admits that Plaintiff was not arrested but denies the remainder of the allegation contained therein for the reason that it is not true.

30. Answering paragraph 30, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation contained therein.

31. Answering paragraph 31, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation contained therein.

32. Answering paragraph 32, Defendant admits the allegation contained therein if Ms. Spencer was administered a preliminary chemical broath test.

33. Answering paragraph 33, Defendant admits that the Bay City Police Department may require a non-driving individual under the age of 21 to submit to a preliminary chemical broath test if it is suspected that the individual has consumed alcohol, but denies

the remainder of the allegation contained therein for the reason that it is not true.

34. Answering paragraph 34, Defendant denies the allegation contained therein for the reason that it is not true as stated.

35. Answering paragraph 35, Defendant denies the allegation contained therein for the reason that it is not true as stated.

36. Answering paragraph 36, Defendant admits the allegation contained therein.

37. Answering paragraph 37, Defendant denies the allegation contained therein for the reason that it is not true.

RELIEF REQUESTED

WHEREFORE, Defendant, the City of Bay City, requests that Plaintiff's Complaint be dismissed in its entirety and that it be awarded costs and attorney fees so unnecessarily incurred.

Respectfully submitted,

CUMMINGS, MCCLUREY, DAVIS & ACHO, P.L.C.

By:


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Dated: November , 2002

/home/brj/spencer.ans

PROOF OF SERVICE

The Undersigned certifies that a copy of the foregoing instrument was served upon the attorneys of record of all parties to the above action by mailing hand delivering faxing the same to their respective business addresses and/or facsimile numbers as disclosed by the pleadings of record herein, with postage fully prepaid. If applicable, thereon on the 26 day of November 2002. I declare under the penalty that the statement above is true to the best of my information, knowledge and belief.

